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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,452	03/08/2001	Archibald I.J. Brain	108195.128	8539

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EXAMINER

LEWIS, AARON J

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/803,452

Applicant(s)
ARCHIBALD I.J. BRAIN

Examiner
AARON J. LEWIS

Art Unit
3761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 8, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-24 and 26 is/are allowed.
- 6) ☒ Claim(s) 25 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Reissue Applications

1. Applicant is reminded of the continuing obligation under 37 CFR 1.56 to timely apprise the Office of any litigation information, or other prior or concurrent proceeding, involving Patent No. 5,878,745 , which is material to patentability of the claims under consideration in this reissue application. This obligation rests with each individual associated with the filing and prosecution of this application for reissue. See MPEP §§ 1404, 1442.01 and 1442.04.
2. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed sagittal plane and the its relative positioning with respect to the airway tube and evacuation tube must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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Claim Rejections - 35 USC § 112

4. Claims 27-29 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The sagittal plane and its relative position with respect to each of the airway tube and evacuation tube is not supported by the specification as originally filed.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 25,27,29 are rejected under 35 U.S.C. 102(b) as being anticipated by Brain ('879).

As to claim 25, Brain discloses a laryngeal mask construction, including: a generally elliptical inflatable ring (18) defining a distal end, the ring being adapted for sealed engagement to a laryngeal inlet of a patient (col.3, lines 8-10); a backing plate (13) defining an air inlet, the backing plate being sealed to the ring (col.3, lines 16-18), the backing plate establishing a laryngeal-chamber side and a pharyngeal-chamber side of the construction; an inflatable back cushion (33) disposed on the pharyngeal-chamber side, the back cushion when inflated contacting a pharyngeal wall of the patient and biasing the ring away from the pharyngeal wall (col.3, lines 55-68); and a

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tubular conduit (#51 of fig.5) defining a distal end, the distal end of the tubular conduit being disposed near the distal end of the ring (18) for communication with an esophageal inlet of the patient (col.4, lines 31-38), a first portion of the conduit adhered to a portion of the back cushion (col.3, lines 34-37), a second portion of the conduit being adhered to a portion of the backing plate (col.4, line 26).

As to claim 27, Brain ('879) as discussed above with respect to claim 25, also teaches the airway tube (11) and the gastric discharge tube (51) being configured alongside each other (col.4, lines 23-25). This side by side configuration would place the respective tubes on either side of a sagittal plane which divides a human body into right and left halves.

As to claim 29, the outer diameter of the airway tube (#11 of fig.5) is illustrated as being larger than the outer diameter of the discharge tube (#51 of fig.5).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brain ('879).

As to claim 28, the relative diameters of the airway tube (11) and discharge tube (51) of Brain can be arrived at through mere routine obvious experimentation and observation with no

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criticality seen in the particular diameters including equal diameters. While Brain (fig.5) illustrates the diameter of the airway tube (11) to be larger than the discharge tube (51), it would have been obvious to modify the relative sizes to accommodate various patient sizes (e.g. adult vs. child may require diameters which are equal because of less demand for air flow volume whereas an adult tube may require a larger air flow volume and therefore a relatively larger air inlet tube).

Allowable Subject Matter

9. Claims 1-24,26 are allowed.

Response to Arguments

10. Applicant's arguments filed 03/08/2002 have been fully considered but they are not persuasive.

Applicant's assertion that Brain ('879) lacks adherence between a conduit and a back cushion is disagreed with because Brain ('879) (col.3, lines 32-37) disclose the back cushion (33) being sealed and adhered to the equator region (35) of ring (18) and being sealed around the outer surface of the socket region (30). The sealing around the outer socket region necessitates sealing around a tube passing adjacent to an outer surface of socket region (30) including conduit (51).

Applicant's assertion that evacuation tube (51) and airway tube (11) of Brain ('879) are not oriented on either side of a sagittal plane are disagreed with because (col.4, lines 23-25) expressly


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disclose a side by side relationship and because the tubes as illustrated in fig.5 are not bonded together beyond the backing plate which leaves them to be oriented in any side by side relationship including one which places them on either side of a sagittal plane, such an orientation following the contours of a patient's pharyngeal anatomy.

10. Any inquiry concerning this communication should be directed to Aaron J. Lewis at telephone number (703) 308-0716.

Aaron J. Lewis

September 30, 2001



Aaron J. Lewis
Primary Examiner